

### REMARKS

This responds to the Office Action dated March 14, 2008.

Claims 1, 2, 11, and 37 are amended, and claims 35-36 are canceled; as a result, claims 1-11, 13-34, and 37 are now pending in this application.

### Information Disclosure Statement

Applicant submitted a Supplemental Information Disclosure Statement and a 1449 Form on March 13, 2008. Applicant respectfully requests that an initialed copy of the 1449 form be returned to Applicants' Representatives to indicate that the cited references have been considered by the Examiner.

### §103 Rejection of the Claims Using Chachques and Heynan

Claims 1-3, 6-11, 13-15, 17-24 and 34-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chachques (U.S. Pub. No. 2002/0124855, herein “Chachques”) in view of Heynen et al. (U.S. Patent No. 6,507,756, herein “Heynen”).

### *Claim 1*

Claim 1 has been amended. Support for the amendment is found, for example, on page 15, lines 8-18 of the present application as originally filed.

Applicant respectfully traverses the rejection because Chachques and Heynen, individually or in combination with each other or reasoning provided in the Office Action, do not provide the claimed subject matter. For example, Applicant is unable to find in Chachques and Heynen, individually or in combination, among other things, a pulse generator programmed to include a selectable pacing mode having an atrioventricular delay that is adjusted by a predetermined amount on a predetermined periodic basis over a predetermined time, as recited in claim 1. Applicant is also unable to find a reason in the Office Action that remedies this deficiency of the cited references.

Applicant respectfully requests reconsideration and allowance of claim 1.

*Claims 2-3 and 6-10*

Claim 2 has been amended for conformity with the amended claim 1.

Applicant respectfully traverses the rejection. Claims 2-3 and 6-10 are dependent on claim 1, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2-3 and 6-10.

Additionally, regarding claim 2, the Office Action states “[s]ee previous office action”. However, claim 2 includes an element that was added by amendment subsequent to the previous office action dated September 10, 2007. Thus, it is believed that no reason has been given in support of the rejection as applied to claim 2.

Applicant respectfully requests reconsideration and allowance of claims 2-3 and 6-10.

*Claims 11*

Claim 11 has been amended by incorporating elements of claims 35-36, which have been canceled.

Applicant respectfully traverses the rejection because Chachques and Heynen, individually or in combination with each other or reasoning provide in the Office Action, do not provide the claimed subject matter. For example, Applicant is unable to find in Chachques and Heynen, individually or in combination, among other things, programming a duty cycle being a ratio of pacing of a first type pacing therapy to pacing of a second type pacing therapy, as recited in claim 11.

Regarding the rejection of claims 11 and 35-36, the Office Action states “[s]ee previous office action”. However, claims 35-36 were added after the previous office action. It is noted that the Office Action states that “[s]ince a typical pacemaker can be programmed with a variety of modes to treat many different conditions, the ordinary artisan would consider it obvious that some of those modes would be considered to be cell therapy, while other modes would be to insure the proper functioning of the heart in general”. If this statement is intended to support the rejection of claims 35-36, it is respectfully traversed because claims 35 recites a pacing mode including a first type pacing therapy and a second type pacing therapy, rather than two pacing modes. It is believed that the ordinary artisan would not consider a pacing mode including a first

type pacing therapy and a second type pacing therapy to be equivalent to two pacing modes.

Claim 36 recites programming a duty cycle being a ratio of pacing of a first type pacing therapy to pacing of a second type pacing therapy. Applicant is unable to find in the Chachques, Heynen, and the Office Action such a duty cycle.

Applicant respectfully requests reconsideration and allowance of claim 11.

#### *Claims 13-15 and 17-24*

Applicant respectfully traverses the rejection. Claims 13-15 and 17-24 are dependent on claim 11, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 11 is incorporated herein to support the patentability of claims 13-15 and 17-24.

Applicant respectfully requests reconsideration and allowance of claims 13-15 and 17-24.

#### *Claims 34-37*

Claims 35-36 have been canceled.

Claim 37 has been amended. Support for the amendment is found, for example, on page 15, lines 8-18 of the present application as originally filed.

Applicant respectfully traverses the rejection. The Office Action states, regarding the rejection of claims 34 and 37, “[s]ee previous office action”. However, claims 34 and 37 were added after the previous office action.

It is noted that the Office Action states that “[s]ince a typical pacemaker can be programmed with a variety of modes to treat many different conditions, the ordinary artisan would consider it obvious that some of those modes would be considered to be cell therapy, while other modes would be to insure the proper functioning of the heart in general”. If this statement is intended to support the rejection of claim 34, it is respectfully traversed because claims 34 recites a selectable pacing mode adapted to provide a first type pacing therapy and a second type pacing therapy, rather than two pacing modes. It is believed that the ordinary artisan would not consider a pacing mode adapted to provide two pacing therapies to be equivalent to two pacing modes.

Regarding claim 37, Applicant is unable to find in Chachques and Heynen, individually or in combination, among other things, an atrioventricular delay is adjusted by a predetermined amount on a predetermined periodic basis over a predetermined time, as recited in claim 37. Applicant is also unable to find reasoning in the Office Action that remedies this deficiency of the cited references.

Applicant respectfully requests reconsideration and allowance of claims 34 and 37.

*§103 Rejection of the Claims Using Chachques, Heynan, and Bonnet*

Claims 4, 5, and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chachques in view of Heynen and further in view of Bonnet (U.S. Patent No. 6,574,507).

Applicant respectfully traverses the rejection.

Claims 4 and 5 are dependent on claim 1, which is believed to be allowable for at least the reasons set forth above. It is believed that the addition of Bonnet does not remedy the deficiency of Chachques and Heynen as discussed for claim 1 above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 4 and 5.

Claim 16 is dependent on claim 11, which is believed to be allowable for at least the reasons set forth above. It is believed that the addition of Bonnet does not remedy the deficiency of Chachques and Heynen as discussed for claim 11 above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claim 16.

Applicant respectfully requests reconsideration and allowance of claims 4, 5, and 16.

Serial Number: 10/723,258

Dkt: 279.466US1

Filing Date: November 25, 2003

Title: METHOD AND APPARATUS FOR CELL AND ELECTRICAL THERAPY OF LIVING TISSUE

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**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6965 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,


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Date May 13, 2008

By 

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 13 day of May 2008.

  
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